

LEO FOX

ATTORNEY-AT-LAW

630 Third Avenue, New York, New York 10017
(212) 867-9595 Fax (212) 949-1857

October 5, 2010

VIA FACSIMILE

Honorable Elizabeth S. Stong
United States Bankruptcy Judge
United States Bankruptcy Court
Eastern District of New York
271 Cadman Plaza East
Brooklyn, New York 11201

Re: Simon Taub, Alleged Debtor
Case No.: 10-49215 (ESS)

Dear Judge Stong:

I would like to advise the Court of the status of the Divorce Action which was scheduled to commence yesterday morning, October 4, 2010. Before the trial began, we advised Judge D'Emic of the involuntary bankruptcy petition filed by Katalin Pota on September 29, 2010, which is currently subject to a Motion to Dismiss pending in your Court.

We also advised Judge D'Emic of the existence of the automatic stay. Judge D'Emic determined that he was not stayed from taking testimony, that he would proceed with the Divorce Action, and indicated that any determination would be stayed pending disposition of the involuntary bankruptcy. The Divorce Action proceeded yesterday morning and Chana Taub took the stand on her direct case. The trial has been adjourned to Wednesday morning, October 6, 2010.

We respectfully ask the Court, as part of our Motion to Dismiss the involuntary petition, to determine that any stay which may have been in effect as a result of the involuntary petition be deemed annulled and of no force and effect as it pertains to the Divorce Action. The language of § 362(d) states, in pertinent part, that "the court shall grant relief from the stay...such as by terminating, annulling, modifying, or conditioning such stay". The word "annulling" indicates that § 362(d) gives the Court the power to ratify retroactively any act which may have constituted a violation of the automatic stay which would otherwise be void. *Vierkant v. Vierkant*, 240 B.R. 317, 324 (8th Cir. BAP 1999) (citing *Schwartz v. United States*, 954 F.2d 569, 571-72 (9th Cir.1992)). We believe such relief is appropriate in order to give effect to the events of yesterday's trial and thus

allow the long awaited Divorce Action to proceed.

Respectfully submitted,

/s/ Leo Fox

Leo Fox

cc: Chana Taub by and through her attorney, David Bellon, Esq.
Esther Newhouse by and through her attorney, Rosemarie Matera, Esq.
Katalin Pota
Lori Lapin Jones, Esq.
Ronald J. Friedman, Esq.
David Mark, Esq.
Alicia Leonard, Esq.

Relief that is available by motion under the Bankruptcy Code and Rules should be sought by motion and on notice to the appropriate parties, not by letter. A motion for relief from the automatic stay may be accompanied by a request to modify the applicable requirements for notice.

It is SO ORDERED.

Dated: Brooklyn, NY
October 5, 2010

s/ ELIZABETH S. STONG

HONORABLE ELIZABETH S. STONG
UNITED STATES BANKRUPTCY JUDGE